IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.66 OF 2002

IN

COMPANY APPLICATION NO.392 OF 2001

IN

COMPANY PETITION NO.229 OF 1988

...

M/s.Jitendra Motors Pvt.Ltd.
and ors. ...Appellants

v/s.

Deputy Commissioner
(Taxes) Nashik Municipal
Corporation and ors. ...Respondents

...

Mr.D.D.Madon, Sr.Counsel with Mr.S.A.Sawant and Mr.H.V.Kode for the Appellants.

Ms.J.M.Sidhwa i/b M/s.Pandya Gandhi & Co. for the Respondent/SICOM.

Ms.Parvati Kaushik i/b M/s.Little & Co. for

Respondent No.2.

Mr.Kedar Dighe for Official Liquidator.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 18TH OCTOBER, 2007

P.C.:

1. Heard the learned Counsel for the Appellant. The learned Counsel appearing for the Official Liquidator and the learned Counsel appearing for SICOM.

2. In our opinion, it is not necessary for us to go into what happened before the conveyance was executed by the Official Liquidator in favour of the Appellant. Admittedly, there is a conveyance of the property executed by the Liquidator in favour of the Appellant on 18-11-2000, and admittedly in that conveyance there is clause (3), which reads as under:-

> 3. The PURCHASER shall not be liable to pay the arrears together with penalties and fines

etc. in respect of the electricity consumed, MIDC dues, Nashik Municipal Corporation Dues & other Govt.dues prior to the handing over of the property.

3. Admittedly, the possession of the property was handed over to the Appellant on 18-7-2000 and therefore, in terms of this conveyance the Liquidator will be liable to pay from the funds in deposit with him the amount of arrears together with penalties and fines in respect of electricity consumed, MIDC dues, dues of Nashik Municipal Corporation as also Govt.dues. There is some dispute between the parties about the exact amount of dues. It is also claimed by the Appellant that some of the dues have been paid by him, and therefore, he is entitled to claim reimbursement from the Liquidator.

4. Taking overall view of the matter, therefore, in our opinion, following order would meet the ends of justice:-

O R D E R

(i) The Appeal is allowed. The order impugned in the

Appeal is set aside. It is held that in view of clause (3) in the conveyance, the Appellant is not liable to pay the arrears together with penalties and fines in respect of electricity consumed, MIDC dues, dues of Nashik Municipal Corporation and other Government dues prior to 18th July, 2000.

(ii) The Appellant shall make an application to the Liquidator pointing out what are the dues in relation to electricity consumed, MIDC dues and dues of the Nashik Municipal Corporation for the period before 18th July, 2000. He will also indicate any amount that he may have paid, together with proof of payment.

(iii) After receiving an application, the Liquidator shall decide the application in the light of the observations made above and the conveyance executed by the Liquidator and make payment of the dues in accordance with law within a period of four weeks from the date of receipt of the application.

(iv) Appeal disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)